

Adopted	Rejected
---------	----------

COMMITTEE REPORT

YES:	10
NO:	1

MR. SPEAKER:

Your Committee on Public Health, to which was referred Senate Bill 315, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 12-7-2-114 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 114. "Incapacitated
- 5 individual", for purposes of ~~IC 12-10-7~~, **IC 12-9-7**, has the meaning set
- 6 forth in ~~IC 12-10-7-1~~. **IC 12-9-7-1.**
- 7 SECTION 2. IC 12-7-2-116 IS AMENDED TO READ AS
- 8 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 116. "Indigent adult",
- 9 for purposes of ~~IC 12-10-7~~, **IC 12-9-7**, has the meaning set forth in
- 10 ~~IC 12-10-7-2~~. **IC 12-9-7-2.**
- 11 SECTION 3. IC 12-7-2-149.1, AS AMENDED BY P.L.145-2006,
- 12 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 13 JULY 1, 2008]: Sec. 149.1. "Provider" means the following:
- 14 (1) For purposes of ~~IC 12-10-7~~, **IC 12-9-7**, the meaning set forth
- 15 in ~~IC 12-10-7-3~~. **IC 12-9-7-3.**

(2) For purposes of the following statutes, an individual, a partnership, a corporation, or a governmental entity that is enrolled in the Medicaid program under rules adopted under IC 4-22-2 by the office of Medicaid policy and planning:

(A) IC 12-14-1 through IC 12-14-9.5.

(B) IC 12-15, except IC 12-15-32, IC 12-15-33, and IC 12-15-34.

(C) IC 12-17.6.

(3) Except as provided in subdivision (4), for purposes of IC 12-17.2, a person who operates a child care center or child care home under IC 12-17.2.

(4) For purposes of IC 12-17.2-3.5, a person that:

(A) provides child care; and

(B) is directly paid for the provision of the child care under the federal Child Care and Development Fund voucher program administered under 45 CFR 98 and 45 CFR 99.

The term does not include an individual who provides services to a person described in clauses (A) and (B), regardless of whether the individual receives compensation.

SECTION 4. IC 12-7-2-159 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 159. "Region", for purposes of ~~IC 12-10-7~~, IC 12-9-7, has the meaning set forth in ~~IC 12-10-7-4~~. IC 12-9-7-4.

SECTION 5. IC 12-9-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 7. Adult Guardianship Services

Sec. 1. As used in this chapter, "incapacitated individual" means an individual who:

(1) cannot be located upon reasonable inquiry;

(2) is unable:

(A) to manage in whole or in part the individual's property;

(B) to provide self-care; or

(C) to do either of the functions described in clauses (A) and (B);

because of mental illness, dementia, physical illness, infirmity, habitual drunkenness, excessive use of drugs, confinement,

1 detention, duress, fraud, undue influence of others on the
2 individual, or other disability (as that term is used in
3 IC 12-10-10-3 or IC 12-14-15-1); or

4 (3) has a developmental disability.

5 Sec. 2. As used in this chapter, "indigent adult" means an
6 individual who:

7 (1) is at least eighteen (18) years of age;

8 (2) has no appropriate person to serve as guardian; and

9 (3) either:

10 (A) has an annual gross income of not more than one
11 hundred twenty-five percent (125%) of the federal income
12 poverty level as determined annually by the federal Office
13 of Management and Budget under 42 U.S.C. 9902; or

14 (B) demonstrates the inability to obtain privately provided
15 guardianship services.

16 Sec. 3. As used in this chapter, "provider" refers to a regional
17 guardianship services provider.

18 Sec. 4. As used in this chapter, "region" means a service
19 provision region established by the division by rule adopted under
20 IC 4-22-2.

21 Sec. 5. The adult guardianship services program is established
22 to provide services within the limits of available funding for
23 indigent incapacitated adults.

24 Sec. 6. The director shall administer the program on a statewide
25 basis.

26 Sec. 7. The director of the division shall adopt rules under
27 IC 4-22-2 to implement this chapter.

28 Sec. 8. (a) The division shall contract in writing for the provision
29 of the guardianship services required in each region with a
30 nonprofit corporation that is:

31 (1) qualified to receive tax deductible contributions under
32 Section 170 of the Internal Revenue Code; and

33 (2) located in the region.

34 (b) The division shall establish qualifications to determine
35 eligible providers in each region.

36 (c) Each contract between the division and a provider must
37 specify a method for the following:

38 (1) The establishment of a guardianship committee within the

provider, serving under the provider's board of directors.

(2) The provision of money and services by the provider in an amount equal to at least twenty-five percent (25%) of the total amount of the contract and the provision by the division of the remaining amount of the contract. The division shall establish guidelines to determine the value of services provided under this subdivision.

(3) The establishment of procedures to avoid a conflict of interest for the provider in providing necessary services to each incapacitated individual.

(4) The identification and evaluation of indigent adults in need of guardianship services.

(5) The adoption of individualized service plans to provide the least restrictive type of guardianship or related services for each incapacitated individual, including the following:

(A) Designation as a representative payee by:

- (i) the Social Security Administration;
- (ii) the United States Office of Personnel Management;
- (iii) the United States Department of Veterans Affairs; or
- (iv) the United States Railroad Retirement Board.

(B) Limited guardianship under IC 29-3.

(C) Guardianship of the person or estate under IC 29-3.

(D) The appointment of:

- (i) a health care representative under IC 16-36-1-7; or
- (ii) a power of attorney under IC 30-5.

(6) The periodic reassessment of each incapacitated individual.

(7) The provision of legal services necessary for the guardianship.

(8) The training and supervision of paid and volunteer staff.

(9) The establishment of other procedures and programs required by the division.

Sec. 9. (a) Each provider is subject to periodic audit of the adult guardianship services program by an independent certified public accountant.

(b) The results of the audit required under subsection (a) must be submitted to the division.

SECTION 6. IC 12-10-1-3, AS AMENDED BY P.L.99-2007,

SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. The bureau shall administer the following programs:

- (1) The federal Older Americans Act under IC 12-9.1-4-1.
- (2) Area agencies on aging services under this article.
- (3) Adult protective services under IC 12-10-3.
- (4) Room and board assistance and assistance to residents in county homes under IC 12-10-6.
- (5) Adult guardianship program under IC ~~12-10-7~~ **IC 12-9-7**.
- (6) Community and home options for the elderly and individuals with a disability under IC 12-10-10.
- (7) Nursing home preadmission screening under IC 12-10-12.
- (8) Long term care advocacy under IC 12-10-13.
- (9) Nutrition services and home delivered meals.
- (10) Title III B supportive services.
- (11) Title III D in-home services.
- (12) Aging programs under the Social Services Block Grant.
- (13) United States Department of Agriculture elderly feeding program.
- (14) Title V senior employment.
- (15) PASARR under older adult services.

SECTION 7. IC 12-10-6-2.1, AS AMENDED BY P.L.99-2007, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2.1. (a) An individual who is incapable of residing in the individual's own home may apply for residential care assistance under this section. The determination of eligibility for residential care assistance is the responsibility of the division. Except as provided in subsections (g) and (i), an individual is eligible for residential care assistance if the division determines that the individual:

- (1) is a recipient of Medicaid or the federal Supplemental Security Income program;
- (2) is incapable of residing in the individual's own home because of dementia, mental illness, or a physical disability;
- (3) requires a degree of care less than that provided by a health care facility licensed under IC 16-28; ~~and~~
- (4) can be adequately cared for in a residential care setting; **and**
- (5) has not made any asset transfer prohibited under the state plan or in 42 U.S.C. 1396p(c) in order to be eligible for**

Medicaid.

(b) Individuals with mental retardation may not be admitted to a home or facility that provides residential care under this section.

(c) A service coordinator employed by the division may:

(1) evaluate a person seeking admission to a home or facility under subsection (a); or

(2) evaluate a person who has been admitted to a home or facility under subsection (a), including a review of the existing evaluations in the person's record at the home or facility.

If the service coordinator determines the person evaluated under this subsection has mental retardation, the service coordinator may recommend an alternative placement for the person.

(d) Except as provided in section 5 of this chapter, residential care consists of only room, board, and laundry, along with minimal administrative direction. State financial assistance may be provided for such care in a boarding or residential home of the applicant's choosing that is licensed under **IC 12-22-2**, IC 16-28, or a Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., that meets certain life safety standards considered necessary by the state fire marshal. Payment for such care shall be made to the provider of the care according to division directives and supervision. The amount of nonmedical assistance to be paid on behalf of a recipient living in a boarding home, residential home, or Christian Science facility shall be based on the daily rate established by the division. The rate for facilities that are referred to in this section and licensed under IC 16-28 may not exceed an upper rate limit established by a rule adopted by the division. The recipient may retain from the recipient's income a monthly personal allowance of fifty-two dollars (\$52). This amount is exempt from income eligibility consideration by the division and may be exclusively used by the recipient for the recipient's personal needs. However, if the recipient's income is less than the amount of the personal allowance, the division shall pay to the recipient the difference between the amount of the personal allowance and the recipient's income. A reserve or an accumulated balance from such a source, together with other sources, may not be allowed to exceed the state's resource allowance allowed for adults eligible for state supplemental assistance or Medicaid as established by the rules of the

1 office of Medicaid policy and planning.

2 (e) In addition to the amount that may be retained as a personal
3 allowance under this section, an individual shall be allowed to retain
4 an amount equal to the individual's state and local income tax liability.
5 The amount that may be retained during a month may not exceed
6 one-third (1/3) of the individual's state and local income tax liability for
7 the calendar quarter in which that month occurs. This amount is
8 exempt from income eligibility consideration by the division. The
9 amount retained shall be used by the individual to pay any state or local
10 income taxes owed.

11 (f) In addition to the amounts that may be retained under
12 subsections (d) and (e), an eligible individual may retain a Holocaust
13 victim's settlement payment. The payment is exempt from income
14 eligibility consideration by the division.

15 (g) The rate of payment to the provider shall be determined in
16 accordance with a prospective prenegotiated payment rate predicated
17 on a reasonable cost related basis, with a growth of profit factor, as
18 determined in accordance with generally accepted accounting
19 principles and methods, and written standards and criteria, as
20 established by the division. The division shall establish an
21 administrative appeal procedure to be followed if rate disagreement
22 occurs if the provider can demonstrate to the division the necessity of
23 costs in excess of the allowed or authorized fee for the specific
24 boarding or residential home. The amount may not exceed the
25 maximum established under subsection (d).

26 (h) The personal allowance for one (1) month for an individual
27 described in subsection (a) is the amount that an individual would be
28 entitled to retain under subsection (d) plus an amount equal to one-half
29 (1/2) of the remainder of:

- 30 (1) gross earned income for that month; minus
- 31 (2) the sum of:
 - 32 (A) sixteen dollars (\$16); plus
 - 33 (B) the amount withheld from the person's paycheck for that
 - 34 month for payment of state income tax, federal income tax,
 - 35 and the tax prescribed by the federal Insurance Contribution
 - 36 Act (26 U.S.C. 3101 et seq.); plus
 - 37 (C) transportation expenses for that month; plus
 - 38 (D) any mandatory expenses required by the employer as a

1 condition of employment.

2 (i) An individual who, before September 1, 1983, has been admitted
3 to a home or facility that provides residential care under this section is
4 eligible for residential care in the home or facility.

5 (j) The director of the division may contract with the division of
6 mental health and addiction or the division of disability and
7 rehabilitative services to purchase services for individuals with a
8 mental illness or a developmental disability by providing money to
9 supplement the appropriation for community residential care programs
10 established under IC 12-22-2 or community residential programs
11 established under IC 12-11-1.1-1.

12 (k) A person with a mental illness may not be placed in a Christian
13 Science facility listed and certified by the Commission for
14 Accreditation of Christian Science Nursing Organizations/Facilities,
15 Inc., unless the facility is licensed under IC 16-28.

16 SECTION 8. IC 12-10-6-3, AS AMENDED BY P.L.1-2007,
17 SECTION 117, IS AMENDED TO READ AS FOLLOWS
18 [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The division, in cooperation
19 with:

20 (1) the state department of health taking into account licensure
21 requirements under IC 16-28; and

22 (2) **the division of mental health and addiction taking into**
23 **account the licensure and certification requirements under**
24 **IC 12-22-2;**

25 shall adopt rules under IC 4-22-2 governing the reimbursement to
26 facilities under section 2.1 of this chapter. The rules must be designed
27 to determine the costs that must be incurred by efficiently and
28 economically operated facilities in order to provide room, board,
29 laundry, and other services, along with minimal administrative
30 direction to individuals who receive residential care in the facilities
31 under section 2.1 of this chapter.

32 (b) A rule adopted under ~~this~~ subsection (a) by:

33 (1) the division; or

34 (2) the state department of health;

35 must conform to the rules for residential care facilities that are licensed
36 under IC 16-28.

37 ~~(b)~~ (c) Any rate established under section 2.1 of this chapter may be
38 appealed according to the procedures under IC 4-21.5.

1 ~~(c)~~ **(d)** The division shall annually review each facility's rate using
 2 the following:

3 (1) Generally accepted accounting principles.

4 (2) The costs incurred by efficiently and economically operated
 5 facilities in order to provide care and services in conformity with
 6 quality and safety standards and applicable laws and rules."

7 Page 2, line 5, delete "and".

8 Page 2, line 7, delete "." and insert "; and

9 **(3) a biannual review of Medicaid waiver reimbursement**
 10 **rates."**

11 Page 2, line 24, delete "division, the office," and insert "division, ~~or~~
 12 the office,".

13 Page 2, after line 30, begin a new paragraph and insert:

14 "SECTION 10. IC 12-10-7 IS REPEALED [EFFECTIVE JULY 1,
 15 2008].

16 SECTION 11. [EFFECTIVE JULY 1, 2008] **(a) On July 1, 2008,**
 17 **all rules, contracts, assets, and liabilities of the division of aging's**
 18 **guardianship program under IC 12-10-7 (before its repeal by this**
 19 **act) are transferred to the division of disability and rehabilitative**
 20 **services under IC 12-9-7 (as added by this act) and are considered**
 21 **rules, contracts, assets, and liabilities of the division of disability**
 22 **and rehabilitative services.**

23 **(b) This SECTION expires July 1, 2013.**

24 SECTION 12. [EFFECTIVE JULY 1, 2008] **(a) This SECTION**
 25 **does not apply to the conversion of acute care beds to**
 26 **comprehensive care beds pursuant to IC 16-29-3.**

27 **(b) As used in this SECTION, "comprehensive care bed" means**
 28 **a bed that:**

29 **(1) is licensed or is to be licensed under IC 16-28-2;**

30 **(2) functions as a bed licensed under IC 16-28-2; or**

31 **(3) is subject to IC 16-28.**

32 **The term does not include a comprehensive care bed that will be**
 33 **used solely to provide specialized services and that is subject to**
 34 **IC 16-29.**

35 **(c) As used in this SECTION, "replacement bed" means a**
 36 **comprehensive care bed that is relocated to a health facility that is**
 37 **licensed or is to be licensed under IC 16-28. This term includes**
 38 **comprehensive care beds that are certified for participation in:**

1 (1) the state Medicaid program; or

2 (2) both the state Medicaid program and federal Medicare
3 program.

4 (d) Except as provided in subsection (e), the Indiana health
5 facilities council may not recommend and the state department of
6 health may not approve the certification of new or converted
7 comprehensive care beds for participation in the state Medicaid
8 program unless the statewide comprehensive care bed occupancy
9 rate is more than ninety-five percent (95%), as calculated annually
10 on January 1 by the state department of health.

11 (e) This SECTION does not apply to a health facility that:

12 (1) seeks a replacement bed exception under subsection (d);

13 (2) is licensed or is to be licensed under IC 16-28;

14 (3) applies to the state department of health to certify a
15 comprehensive care bed for participation in the Medicaid
16 program if the comprehensive care bed for which the health
17 facility is seeking certification is a replacement bed for an
18 existing comprehensive care bed;

19 (4) applies to the division of aging in the manner:

20 (A) described in subsection (e); and

21 (B) prescribed by the division; and

22 (5) meets the licensure, survey, and certification requirements
23 of IC 16-28.

24 (f) An application described in subsection (e)(4) for a
25 replacement bed exception must include the following:

26 (1) The total number and identification of the existing
27 comprehensive care beds that the applicant requests be
28 replaced by health facility location and by provider.

29 (2) A verification from the health facility holding the
30 comprehensive care bed certification that the health facility
31 has agreed to transfer the beds to the applicant health facility.

32 (3) A copy of the complete agreement between the health
33 facility transferring the beds and the applicant health facility.

34 (4) Any other information requested by the division of aging

- 1 **that is necessary to evaluate the transaction.**
- 2 **(g) This SECTION expires June 30, 2011."**
- 3 Renumber all SECTIONS consecutively.
 (Reference is to SB 315 as reprinted January 29, 2008.)

and when so amended that said bill do pass.

Representative Brown C